

Message Text

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44

ACTION EB-11

INFO OCT-01 EUR-25 IO-12 ADP-00 AGR-20 CEA-02 CIAE-00

COME-00 DODE-00 FRB-02 H-02 INR-10 INT-08 L-03 LAB-06

NSAE-00 NSC-10 PA-03 RSC-01 AID-20 CIEP-02 SS-15

STR-08 TAR-02 TRSE-00 USIA-12 PRS-01 OMB-01 AF-10

ARA-11 EA-11 NEA-10 OIC-04 RSR-01 /224 W

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P R 161525 Z MAY 73

FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 9356

INFO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY THE HAGUE

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY ROME

USMISSION EC BRUSSELS

USMISSION OECD PARIS

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E. O. 11652: N/A

TAGS: ETRD, GATT, EFIN, US, FR, BE, NL, EEC

SUBJECT: GATT: DISC AND EUROPEAN INCOME TAX PRACTICES AT MAY 29
COUNCIL

REF: STATE 90894

1. US 23:2 COMPLAINT AGAINST CERTAIN TAX PRACTICES OF
FRANCE, BELGIUM AND NETHERLANDS SUBMITTED TO GATT MAY 14.
SUBJECT HAS BEEN INCLUDED ON MAY COUNCIL AGENDA.
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2. MISSION'S PRELIMINARY COMMENTS ON TACTICAL HANDLING FOLLOW:

(A) WE SEE NO POSSIBILITY OF CONVINCING EC TO MOVE DISC ISSUE INTO A NEGOTIATING FORUM BEFORE PANEL CONSIDERS COMPLAINT. TRANSFER MIGHT BE POSSIBLE LATER, HOWEVER, ESPECIALLY IF PANEL UNABLE TO PRODUCE CLEAR- CUT FINDINGS/ RECOMMENDATIONS. WE BELIEVE SIMULTANEOUS CONSIDERATION OF US AND EC COMPLAINTS LIKELY TO ENCOURAGE INCONCLUSIVE RESULT, BUT WE ARE UNCERTAIN WHETHER INCLUSION OF OUTSIDE TAX EXPERTS WOULD BE IN OUR INTEREST.

(B) AS REPORTED GENEVA 2142 EC HAS ALREADY OPPOSED A SECRETARIAT FEELER ABOUT DRAWING ON OUTSIDE EXPERTISE FOR PANEL ON DISC. WE ARE INCLINED THINK TIME TOO SHORT BETWEEN NOW AND MAY 29 TO RESOLVE THIS QUESTION. WITH DIFFERING VIEWS ON PROCEDURAL ISSUES AT MAY 29 COUNCIL, OR IF HANDLING IS SUFFICIENTLY CONFUSED TO PREVENT ACTION, THERE WOULD BE -4-6 WEEKS UNTIL NEXT COUNCIL TO TRY TO CONVINCE EC OF MERITS OF OUTSIDE EXPERTS IF WE DECIDE THEY WOULD BE FEASIBLE AND HELPFUL. THEREFORE SUGGEST WE AVOID TALKING WITH EC OR SECRETARIAT ABOUT EITHER SUBSTANCE OR PROCEDURE OF DISC AND US COUNTERCLAIM UNTIL GATT COUNCIL MEETS. INTRODUCING NEW AND MODERATELY CONTROVERSIAL PROPOSAL LIKE OUTSIDE EXPERTS WOULD INCREASE LIKELIHOOD OF NO AGREEMENT MAY 29 ON HOW TO PROCEED AND PROBABLY DEFER MATTER UNTIL NEXT COUNCIL.

(C) WE CAN ALSO CONTRIBUTE TO DEFERRAL BY DECLINING TO APPROVE PRIOR TO MAY 29 COUNCIL ANY NOMINEE FOR CHAIRMAN OF PANEL ON DISC. IN THIS CONNECTION, SECRETARIAT HAS SOUGHT OUR VIEWS AS TO ACCEPTABILITY FOR DISC PANNEL OF EITHER AMB CORKERY (AUSTRALIA) OR AMB LAI (MALAYSIA). WE MADE NO REPLY. CORKERY WAS AUSTRALIAN GATT NEGOTIATOR DECADE AGO AND THUS WELL QUALIFIED IN GENERAL GATT TERMS, THOUGH NOT A TAX EXPERT, BUT WE DOUBT VERY MUCH HE WOULD ACCEPT IF ASKED DUE HIS PREOCCUPATION WITH OTHER MATTERS IN GENEVA. LAI HAS GOOD GRASP OF GENERAL GATT WORK AND WOULD BE IMPARTIAL CHAIRMAN, ALTHOUGH HE TOO IS NOT A TAX EXPERT AND HAS MANY OTHER RESPONSIBILITIES IN GENEVA WHICH WOULD LIMITED OFFICIAL USE

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LIMIT HIS AVAILABILITY OR WILLINGNESS TO ACCEPT IF ASKED.

(D) AS SUGGESTED IN (A) ABOVE WE BELIEVE SIMULTANEOUS CONSIDERATION OF EC AND US COMPLAINTS LIKELY TO ENCOURAGE INCONCLUSIVE RESULT WE DESIRE. OPTIONS PARAS 2 A AND B REFTTEL DO NOT EXHAUST POSSIBILITIES, HOWEVER, AS FOR EXAMPLE

FRANCE MAY WANT SEPARATE PANEL ON US COMPLAINT AGAINST FRANCE. COUNCIL COULD ALSO END UP WITH SEPARATE PANELS WITH SAME CHAIRMAN AND SAME MEMBERS. RE OPTION A, REFTEL, WE ALSO THINK IT POSSIBLE AGREEMENT COULD BE REACHED TO PERMIT DISC TO BE CONSIDERED FIRST, BUT WITHOUT UNDERSTANDING PANEL WOULD REACH DECISION BEFORE PROCEEDING WITH COMPLAINTS AGAINST EC COUNTRIES. MOREOVER OPTIONS LISTED REFTEL IMPLY US HAS VETO ON PROCEDURAL HANDLING WHICH IS NOT THE CASE. GATT TRADITION IS OF COURSE TO SEEK COMPROMISE AMONG PARTIES MAINLY CONCERNED AND, AS WE SUGGEST ABOVE, THERE MAY BE OPPORTUNITIES TO DEFER ACTION. AT SAME TIME, HOWEVER, WE CANNOT SIMPLY INSIST ON ONE PARTICULAR WAY OF HANDLING EC'S DISPUTE AGAINST US AND THUS EFFECTIVELY PRECLUDE CPS FROM CARRYING OUT THEIR RESPONSIBILITIES UNDER 23:2. MISSION ACCORDINGLY WILL NEED SOME FLEXIBILITY IN INSTRUCTIONS FOR MAY 29 COUNCIL ON ALL PROCEDURAL ISSUES. BASSIN

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LONDON
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